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**IN THE
COURT OF APPEALS OF INDIANA**

TAMMY CHILDERS,

Appellant-Respondent,

vs.

STATE OF INDIANA,

Appellee-Petitioner.

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No. 18A02-0711-CR-940

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable John M. Feick, Judge
Cause Nos. 18C04-0710-FB-18, 18C04-0710-FD-153

April 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Tammy Childers appeals the trial court's order terminating her participation in a Forensic Diversion Program¹ and imposing the full term of her previously-suspended five-year sentence. Childers argues that the evidence is insufficient to support the trial court's decision. Finding no error, we affirm the judgment of the trial court.

FACTS

On March 29, 2007, Childers pleaded guilty to class C felony burglary in Cause Number 18C02-0611-FB-22 and to class D felony receiving stolen property in Cause Number 18C02-0612-FD-164. The plea agreement provided that Childers would receive a sentence of five years, with three executed and two suspended. It further provided that execution of the sentence would be stayed on the condition that Childers successfully complete a three-year Forensic Diversion Program. Finally, the plea agreement explained the consequences of a failure to complete the program:

Failure of the defendant to complete the entire 2-phase program . . . shall result in the immediate execution of the defendant's sentence, to be served at the Indiana Department of Correction[.]. Any major violation of program rules shall constitute a failure to complete program. Major violations shall include absconding from the program, commission of a new criminal offense, or more than three positive screens for alcohol or controlled substances. A major violation will result in a Petition To Revoke being filed in the [Forensic Diversion Drug Court]. At a hearing on said Petition, should the Forensic Diversion Judge determine, by a preponderance of the evidence, that there has been a major violation, the defendant shall be dismissed from the program and [her] sentence shall be executed.

¹ A Forensic Diversion Program is designed to provide an adult who has a mental illness and/or addictive disorder and who has been charged with a non-violent offense an opportunity to receive community treatment for the mental illness and/or addiction instead of or in addition to incarceration. Ind. Code § 11-12-3.7-4.

Appellant's App. p. 62 (emphasis added). At the guilty plea hearing, the trial court engaged in the following conversation with Childers:

Q. Now, ma'am, [the prosecutor] pointed out this agreement talked about five years with three years executed, and it would be the position of the Court that if you violate, have a major violation of this program that would cause it to be revoked, you're going away for five years. You're not going away for three. Do you understand that?

A. Yes, sir.

Q. Now, if you successfully pass the program, then you go into an additional two years supervised standard probation. Do you understand that?

A. Yes, I do.

Q. Do you accept those conditions?

A. Yes, I do.

Tr. p. 8. The trial court sentenced Childers to two years, with one suspended, in Cause Number FD-164, and to three years, with one suspended, in Cause Number FB-22, to be served consecutively. Three years were stayed pending Childers's successful completion of the Forensic Diversion Program.

On September 5, 2007, the State filed a petition to terminate Childers's participation in the program because she had tested positive for marijuana on three occasions and had been charged with three counts of class C felony forgery, two counts of class D felony fraud, and one count of class D felony theft. Following a hearing, on October 17, 2007, the trial court found that Childers had violated the terms of the program, terminated her participation, and sentenced her to an executed term of five years. Childers now appeals.

DISCUSSION AND DECISION

We apply the same standard of review to a trial court's ruling on a petition to revoke participation in a community corrections program as we do to a ruling on a petition to revoke probation. Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999). A probation revocation hearing is in the nature of a civil proceeding and the alleged violation need be proven only by a preponderance of the evidence. Brooks v. State, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998). When the sufficiency of a factual basis is challenged, we neither reweigh the evidence nor judge the credibility of the witnesses, instead examining the evidence most favorable to the State. Id. If there is substantial evidence of probative value to support the trial court's decision that the probationer is guilty of any violation, then revocation is appropriate. Id. Proof of any one violation is sufficient to revoke a defendant's participation in a community corrections program. Id. Placement in such a program is a matter of grace and is a conditional liberty that is a favor, not a right. Cox, 706 N.E.2d at 549.

Here, Childers first argues that there is insufficient evidence supporting the trial court's decision to revoke her participation in the Forensic Diversion Program. Childers's plea agreement provided that her participation in the program would be revoked upon a major violation of program rules. The plea agreement also stated, among other things, that commission of a new criminal offense constitutes a major violation. Appellant's App. p. 62.

Evidence was presented at Childers's revocation hearing that she was interviewed as a potential suspect in an ongoing law enforcement investigation on August 15, 2007. At the

outset of the interview, Childers waived her Miranda² rights and then confessed that she had stolen someone's purse and used the victim's debit card to make purchases. Tr. p. 46-49. Police officers then searched Childers's residence, where they found some of the items that she had purchased with the stolen debit card. Subsequent to the search, Childers was arrested and eventually charged with three counts of class C felony forgery, two counts of class D felony fraud, and one count of class D felony theft. Having reviewed the record, we find that the trial court properly concluded that the State proved by a preponderance of the evidence that Childers committed a major violation of the program rules by committing these new offenses. See Richeson v. State, 648 N.E.2d 384, 389 (Ind. Ct. App. 1995) (finding that probation may be revoked where there is evidence presented from which the trial court could find that an arrest was reasonable and supported by probable cause of a violation of criminal law; it is not necessary for the State to show that the defendant was actually convicted of a crime). Pursuant to the terms of her plea agreement,³ therefore, the trial court did not err by revoking Childers's participation in the Forensic Diversion Program.

Childers also argues that the trial court did not have authority to impose a fully-executed five-year term after it revoked her participation in the program. She notes that the plea agreement provided that her sentence would be five years, with three executed and two suspended, contending that as a result of that language, the trial court only had authority to

² Miranda v. Arizona, 384 U.S. 436 (1966).

³ Childers argues that revocation was inappropriate because she was not provided with a complete packet of information about probation and drug court rules. That is of no moment, however, inasmuch as her plea agreement explicitly stated that committing a new criminal offense would constitute a major violation of program rules such that revocation would be warranted.

impose a three-year executed sentence following revocation. At the guilty plea hearing, however, the trial court explained that if Childers committed a major violation of program rules, her participation in the program would be revoked and she would be “going away for five years. You’re not going away for three. Do you understand that?” Tr. p. 8. Childers replied that she understood and then accepted the conditions. Under these circumstances, Childers may not now complain that a consequence for her behavior—to which she explicitly agreed—is unfair. Thus, we find that the trial court properly ordered Childers to serve a full five-year executed term.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.